

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 8, 2003 at 9 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB81, 1/8/2003; HB92,
1/8/2003; HB95, 1/8/2003
Executive Action: None

HEARING ON HB 95**Sponsor:** REP. BOB LAWSON, HD 80, Whitefish**Opening Statement by Sponsor:**

REP. LAWSON opened on HB 95, stating this bill substitutes a serious physical condition, disease, or syndrome for an incapacitating physical condition, disease, or syndrome as one of the tests for medical parole. REP. LAWSON drew attention to the fiscal note that states the Department of Corrections (DOC) may be impacted by a reduction of medical and custody costs. Each case varies greatly in costs as the medical conditions vary. The most recent review of medical costs indicates that the average of the top 43 cases is \$23,256 per year. If the Bureau of Prisons (BOP) released two out of three current cases available, approximately \$46,512 per year in general fund savings in the outside medical budget could accumulate.

{Tape: 1; Side: A; Approx. Time Counter: 36 - 90}**Proponents' Testimony:**

Diana Koch, Chief Legal Counsel, DOC, supported HB 95 but stated she needed to propose an amendment to define serious medical condition. Ms. Koch presented Exhibit 1 which defines serious physical condition. This is the inability to engage in any substantial programming activity by reason of any medically determinable physical impairment(s) which can be expected to result in death or which can last for not less than 12 months or terminal illness that has a likely life expectancy of 12 months or less. An inmate at prerelease would also qualify under this proposed bill.

EXHIBIT (juh03a01)***{Tape: 1; Side: A; Approx. Time Counter: 91 - 149}***

Ms. Rantz, Medical Director at Montana State Prison, (MSP) Missoula, supported HB 95. This bill is very important and creates another tool to work with very ill inmates and more effectively utilize DOC resources. The current definition requirement of incapacitating physical condition which renders the person highly unlikely to present a clear and present danger to public safety will only apply at present to about 8-10 people and perhaps 1 or 2 per year after that. Ms. Rantz stated that passage of HB 95 would not result in mass exodus of inmates out of MSP. It is also more expensive to provide medical care in

prison than outside of prison thus this is not an issue of cost shifting.

{Tape: 1; Side: A; Approx. Time Counter: 151 - 254}

Mike Mahoney, Warden, MSP, supported HB 95. He stated that ten cases have applied for medical parole and only two were approved. There is no public risk to the passage of this bill however there is a problem posed to MSP in providing medical services to a seriously physically inmate. He explained that they are not looking at extensive numbers nor looking to pass the burden but they are looking at managing resources in the most feasible and humane manner.

{Tape: 1; Side: A; Approx. Time Counter: 255 - 295}

Chris Christiaens, Great Falls, supported HB 95 stating it would allow inmates with serious illnesses to be placed into more appropriate yet secure facilities. Once an inmate is Medicaid eligible and on parole, they qualify for Medicaid services which would be a 30/70 split. Minnesota and Washington are doing this and it is saving them millions of dollars a year. It costs roughly \$20,000 a year to keep an inmate incarcerated, it would be switching that to about a \$5000 a year general fund with \$15,000 picked up by the federal government.

{Tape: 1; Side: A; Approx. Time Counter: 298 - 388}

Craig Thomas, Executive Director Montana Board of Pardons and Parole, Butte, supported HB 95 explaining that in medical parole, an inmate would have to appear before the parole board. A public hearing would be set and notice would be sent to the County Attorney, Sheriff's and police departments, and victims. All interested parties would have the opportunity to testify or to submit any written statements. There are checks and balances in the process. The board can set appropriate conditions and return an offender to custody if their physical condition changes.

Opponents' Testimony:

Sharon Howard, Health Care Consultant, Great Falls, opposed HB 95 stating that it is seductive and sounds like a good idea but the bill is not a good deal for the seriously ill inmate nor the general public. Inmates come into the correctional system with serious medical illnesses. Most do not have the financial resources to get proper health care outside the prison. Costs will not be lowered by moving inmates out of prison. Paroling inmates for serious medical reasons is shifting the burden and

will create a negative financial ripple effect in the community.

{Tape: 1; Side: A; Approx. Time Counter: 394 - 511}

Sammy Butler, Montana Nurses Association, opposed HB 95 stating it is based on the assumption that inmates will have access to health care outside the prison. This bill is shifting costs and accountability. **Ms. Butler** urged a Do Not Pass.

{Tape: 1; Side: B; Approx. Time Counter: 513 - 528}

Pat Melby, Montana Medical Association, Helena, opposed HB 95. Medicaid is already seriously underfunded and would be greatly impacted by the release of these inmates with serious physical conditions.

{Tape: 1; Side: B; Approx. Time Counter: 530 - 558}

Jim Smith, County Attorney's Association, Helena, opposed HB 95. He stated they have a problem with discharging inmates early as there is not a clear definition of serious. He questioned whether any chronic disease would make one eligible such as hepatitis C, diabetes, or obesity. The County Attorney's Association would feel better about this bill if the Department Of Public Health and Human Services (DPHHS) were here, in the loop or involved in this legislation. DPHHS could provide information on Medicaid eligibility and surrounding issues such as pre-existing conditions. HB 95 is moving into uncharted waters and other interested parties such as the nursing homes and DPHHS should be involved. More discussion is necessary before this bill should be considered.

{Tape: 1; Side: B; Approx. Time Counter: 560 - 613}

REP. EVE FRANKLIN, HD 42, Great Falls, opposed HB 95 as it is bad public policy from a health care perspective. HB 95 has ripple effects throughout the entire health care system. This is a quick fix down a slippery slope.

{Tape: 1; Side: B; Approx. Time Counter: 615 - 656}

Informational Testimony:

Bob Olson, MT Health Care Providers, neither opposed nor supported HB 95. Mr. Olson looked at the fiscal note stating it has some policy questions. Medicaid spending would affect the federal budget and have to be factored in. Hospice may be cut due to budget concerns which would eliminate Medicaid hospice.

This will require communities to raise the money on a volunteer basis. He stated more clarity in the fiscal note is necessary. He stated that the definition of serious physical condition lowers the bar allowing more people to claim they qualify. Once inmates are gone, the responsibility to provide continued care should remain with the DOC. A good luck and God speed is not good public policy.

{Tape: 1; Side: B; Approx. Time Counter: 660 - 724}

Questions from Committee Members and Responses:

REP. PARKER asked Warden Mahoney about the three current cases that would be recommended under the proposed change. **REP. PARKER** inquired into their underlying felony offenses. **Warden Mahoney** stated that he did not know but he could help with the intent of the question. There is a system of checks and balances the DOC presents to the Medical Parole Board. The DOC would continue to have control over the individual who is medically paroled. He stated that if the individual became a risk to society or to public safety, the Board could revoke him. Prisons are the most expensive place to provide medical care and this is why we are proposing this bill.

{Tape: 1; Side: B; Approx. Time Counter: 727 - 773}

REP. CLARK questioned Ms. Koch's amendments and, in particular, the definition of substantial programming activity and the definition of serious physical activity. **Ms. Koch** stated that the definitions could be improved and revised. She explained the term substantial programming activity and that an inmate must be able to work or engage in school.

{Tape: 1; Side: B; Approx. Time Counter: 774 - 886}

REP. HARRIS asked Dr. Ranz about an offender's crime history. **Dr. Ranz** stated medical personnel seldom know this information and that is part of the Corrections medicine mentality. **REP. HARRIS** asked **Dr. Ranz** whether it would be cost-effective to buy health insurance policies. **Dr. Ranz** stated that they have researched this issue and it would be very costly. **REP. HARRIS** asked Dr. Ranz about the heart transplant issue; ie, huge costs and getting them out of the prison and onto the street. **Dr. Ranz** stated heart transplant candidates are very rare and develop over a long period of time. These folks would have most likely been moved out long before a transplant is requested. The Montana Board would not likely have granted a heart transplant under the California fact scenario.

{Tape: 1; Side: B; Approx. Time Counter: 887 - 982}

REP. RICE asked Warden Mahoney about the parameters of medical parole and if it is similar to the criteria of regular parole. **Warden Mahoney** responded that criteria of regular parole would apply based on the crime. The boards would apply conditions based on the criteria of their original violation such as not to have access to narcotics if that was a precipitating condition to the original conviction. If there is no support system for an inmate, it would be unlikely they would receive a medical parole. **REP. RICE** asked about the situation where a medical parolee violates their parole to which **Warden Mahoney** replied they would be revoked.

{Tape: 1; Side: B; Approx. Time Counter: 983 - 999}

REP SALES asked Ms. Koch about the definition of serious illness. **Ms. Koch** replied that under the incapacitating definition, the person simply cannot move and that the definition of serious would encompass incapacitating.

Closing by Sponsor:

REP. LAWSON, closed on HB 95 stating there needs to be some more work on the language of this bill before executive action is taken. He stated as far as cost shifting, there is some but that is how our system is and that health costs are greater in prison. This process does not hold a risk to the community. The checks and balances process has not and will not change. The Board of Pardons and Parole will still have the same criteria regarding whether to grant or deny a medical parole request.

{Tape: 2; Side: B; Approx. Time Counter: 190 - 212}

HEARING ON HB 81

Sponsor: **REP. VERDELL JACKSON, HD 79, Kalispell**

Opening Statement by Sponsor:

REP JACKSON opened on HB 81, stating this bill would make theft of a firearm a felony. He stated that a person convicted of the offense of theft of a firearm shall be fined an amount not to exceed \$50,000 or be imprisoned not to exceed 5 years, or both.

{Tape: 2; Side: B; Approx. Time Counter: 320 - 391}

Proponents' Testimony:

Brian Fulford, Sergeant of Detectives, Kalispell Police Department, supported HB 81 stating this is an anti-criminal law and punishes those who steal guns.

EXHIBIT(juh03a02)

Jim Campbell, Montana Association of Chiefs of Police, Helena, supported HB 81.

Opponents' Testimony: None**Informational Testimony:** None**Questions from Committee Members and Responses:**

REP. GALLUS asked Mr. Fulford how many guns were stolen and how many guns recovered in Flathead County in 2002. **Mr. Fulford** stated that he did not know for sure but recovered approximately 6-12. Of those, only one person was charged with a felony and the others were charged with misdemeanors. **REP. GALLUS** asked how much this will cost and said that he could not make a decision to pass HB 81 without this information. **REP. CLARK** stated that a fiscal note would be required with this bill before executive action could be taken.

REP. NOENNIG asked Mr. Fulford what good or preventative effect this bill would have. **Mr. Fulford** stated that prevention was not part of this bill but rather holding people accountable is the intent.

REP. HARRIS asked Jim Smith about how the County Attorneys feel about this Bill. **Mr. Smith** stated the County Attorney's Association and the Sheriff's Association opted to remain neutral but on its face the bill looks sound.

REP. NEWMAN asked Mr. Jackson about any statistical evidence about the sponsor's comments that people who steal firearms often use them in other violent crimes. As a prosecutor, **REP. NEWMAN** stated that his experience is that people sell the firearms quickly for income.

REP. STOKER asked Mr. Fulford if HB 81 is just upgrading a misdemeanor. **Mr. Fulford** stated they do not always get enough evidence to prove their case. They try to investigate all aspects of a person's criminal behavior and to prove the person knew the gun was stolen.

REP. NEWMAN added that Montana already has a statute which increases a defendant's sentence if a firearm was used in the commission of the underlying crime. In cases of assault where it's a felony assault due to use of a weapon, the Montana Supreme Court stated that the prosecution doesn't get two bites of the apple.

REP. CLARK remarked on the serious budget situation in Montana and with no fiscal note on the costs, he asked **Mr. Jackson** how much they are willing to pay to prosecute each offense.

Closing by Sponsor:

REP. JACKSON closed on HB 81 stating there should be enhanced penalties for stealing a gun. He would like to work on amending HB81.

HEARING ON HB 92

Sponsor: **REP. BOB LAWSON, HD 80, Flathead**

Opening Statement by Sponsor:

REP. LAWSON opened on HB 92, stating that this would require peace officers who cite youths for violating a statute to notify the parents or guardian within two business days.

Proponents' Testimony: None

Opponents' Testimony:

Kevin Olson, Chief of Police, Havre Police Department, represented Montana Chiefs of Police opposed HB 92 due to the increased work load and difficulty of compliance. He also had some problems with the bill's language. This bill creates confusion as it is written into the youth court act. He stated that some people are not from Havre and many people they cite do not have telephones. He stated they already make every attempt to notify parents when they cite youths. Police force and law enforcement can not be held accountable for parent/child communications.

Tim Shank, Great Falls Police Department, opposed HB 92 stating there has to be good communication between parents and children and making the police and law enforcement the go between is very taxing.

Jim Smith, Montana Sheriff's and Peace Officer's Association, opposed HB 92. Mr. Smith stated discretion should be left to law enforcement to call or not to call the parents. He stated there needs to be discretion and flexibility in the hands of law enforcement officers.

Brian Fulford, Sergeant Kalispell Police Department, opposed HB 92 stating the burden should be on the parents and not law enforcement.

Randy Yaeger, Montana Highway Patrol, Helena, opposed HB 92 as it would cause a great imposition on smaller communities that are already overworked and understaffed. He said that they already make every attempt to contact parents, or next of kin.

{Tape: 2; Side: B; Approx. Time Counter: 485 - 920}

Questions from Committee Members and Responses:

REP. NEWMAN asked **REP. LAWSON** about amending the mandatory language "shall notify" due to many circumstances such as the parents are not home. **REP. NEWMAN** expressed concern about increased liability on law enforcement. **REP. LAWSON** responded the intent of HB 92 is to inform the parents to the best of the officer's ability and perhaps the language needs to be worked out.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 118}

Closing by Sponsor:

REP. LAWSON closed on HB 92, stating the intent of this bill is to notify the parents or to make a reasonable attempt to so notify. The parents need to be in the loop regarding their children.

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh03aad)